IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.5 OF 2007

WITH

CIVIL APPLICATION NO.13 OF 2007

Vishwas Gajanan Joshi ...Appellant

Versus

Sarita w/o Mohan Khanolkar & Ors. ...Respondents

.....

Mr.R.S.Apte with Mr.Vaibhav Patankar for Appellant.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 20, 2007.

P.C.

1. Heard Counsel for the Appellant. I see no infirmity in the view taken by the Court below. The Court has rightly invoked Section 6(iv)(d) of the Bombay Court Fees Act, 1959 in the fact situation of the present case, especially having regard to the nature of relief claimed in the Suit.

2. Applying the said provision and considering the value of the land prevailing in 1988 as can be seen from the ready reckoner, the Court has accepted the value of the land which far exceeds the pecuniary jurisdiction of the Court. There is no reason to doubt the correctness of that approach.

3. The argument that plea of jurisdiction was not raised in the written statement, does not preclude the Court from passing order on that issue, if required. Rather, it is the duty of the Court to do so. There is no substance in this Appeal. The Appeal fails and is dismissed. Companion Civil Application also stands disposed of.

4. Appellant is, however, granted one months time to present the Plaint in the appropriate Court, as it is stated across the bar that Plaint has still not been returned to the Plaintiff.

5. Ad-interim to continue for a period for

six weeks from today to enable the Appellant to move the appropriate Court for further protection if so advised. This indulgence is shown as ad-interim order was operating in favour of the Appellant since 1999.

A.M.KHANWILKAR, J.